IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.344 Of 2006.
Judgment reserved on: 31.7.2007
Date of decision: August 9th, 2007.

Ganpat Sadhu. ..... Appellant.

Vs.

State of Himachal Pradesh. ..... Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Ms. Kamlesh Kumari, Advocate.

For the respondents: Mr. V.K.Verma, Addl. Advocate General.

Surinder Singh, J :

The appellant has been convicted by the Presiding Officer, Fast Track Court, Mandi under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, hereinafter be called the Act, and sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.50,000/-, allegedly having been found to be in his possession 700 gms Charas. He has assailed his conviction and sentence in the instant appeal.

In brief, the prosecution case has been that on 10.1.2004 at 5.30 p.m., S.I. Dabe Ram of Police Station Aut was on patrolling duty in the Bazar. The police party spotted the appellant on the stairs of the public toilet holding a bag on his left shoulder, who on seeing the police party started running

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

downwards. On getting suspicion, he was apprehended by HHC Munshi Ram (PW3). On searching the bag in his possession, in the presence of Nande Ram (PW2), the police recovered 700 gms. of charas, out of which two sample of 25 gms. each were separated and sealed with seal impression `H'. The samples were sealed separately with the same seal. The charas was taken into possession vide memo Ext.PW1/A. The samples of seals Ext.PW1/C was separately taken and NCB form Ext.PW1/D was filled in triplicate on the spot. A Rukka Ext.PW6/A was sent through HHC Munshi Ram aforesaid, on the basis of which FIR Ext.PW6/B was formally registered by HC Gandhi Ram (PW6). The police prepared site plan Ext.PW8/A. On the personal search, the identify card Ex.P4 was taken into possession vide seizure memo Ext.PW8/B. the grounds of arrest was also informed vide memo Ext.PW8/C. The case property alongwith NCB forms, seizure memo and sample seal were deposited with HC Gandhi Ram (PW6) on the same day at 8.30 p.m., which was entered in the register of Malkhana, copy of which is Ext.PW6/C. Next day, i.e. on 11.1.2004, the same pf charas alongwith NCB forms, sample seal and FIR were sent to Composite Testing Laboratory, Kandaghat, vide R/C No.99/2004, through Constable Inder Singh, who deposited the same on the same day. The special report Ext.PW5/B was also prepared and sent to the Additional Superintendent of Police through HHC Munshi Ram. On receipt of Chemical Examiner report Ext.PW8/D, the challan was presented in the court for trial.

The appellant pleaded not guilty and claimed trial. Prosecution examined 8 witnesses to prove the case. Appellant was examined under Section 313 of the Code of Criminal

Procedure when his case was denial simplicitor. No defence was led. Upon hearing the parties and going through the record, the learned trial court convicted and sentenced the appellant aforesaid.

I have heard Ms. Kamlesh Kumar, learned counsel for the appellant and Mr. V.K. Verma, learned Additional Advocate General for the respondents. I have considered the rival contentions thoughtfully.

SI Dabe Ram (PW8) has corroborated the prosecution version. According to him, on seeing the police party, the appellant who was holding a bag on his left shoulder started running and upon suspicion, he was apprehended and 700 grams of Charas was taken in to possession. Out of the recovered quantity, two samples of 25 grams each were drawn. The main parcel was sealed at 9 places by the seal impression `H' and the sample packets were marked as A-1 and A-2 and these were sealed at 6 places each with the same seal. The seizure memo Exts.PW1/A and B were prepared. Seal impressions were also taken. The witness has also signed the seizure memos. The samples of seal was separately drawn and NCB forms was filled in on the spot. Rukka Ext.PW6/A was prepared. He has also stated that identity car Ext.P4 was also recovered from the appellant, which was taken into possession vide memo Ext.PW8/B.

The instant case is a case of chance recovery, therefore the provisions of Section 50 of the Act are not attracted at all, as held in **State of H.P.** v. **Pawan Kumar** **[2005 Cr.L.J. 2208]**. The version given by PW8 has been duly corroborated by PW1 SI Dalip Singh. The independent witness Nande Ram (PW2),

PW3 HHC Munshi Ram, who had also arranged for the Scales for weighing the Charas. PW4 Constable Inder Singh is a link evidence. According to him, on 11.1.2004, MHC Gandhi Ram had handed over one Charas parcel sealed with seal impression `H' alongwith NCB Form, FIR search and seizure memos and forwarding letter which he took to C.T.L. Kandaghat and on 12.1.2004 in the safe condition and obtained a receipt which was handed over to MHC on his return and he did not tamper with the sample during the time it remained with him. This version is duly supported by the appellant in his cross-examination. PW5 has proved the handing over of special report Ext.PW5/A to Additional Superintendent of Police, which fact is not disputed by the appellant. PW6 HC Gandhi Ram has stated that the case property was deposited by him on the day when it was recovered by SI/SHO Dabe Ram. All the parcels were sealed with seal impression `H'. The NCB form, recovery memo, sample of seal were also deposited with him, which were entered in Malkhana Register, copy of which is Ext.PW6/C and further on 11.1.2004, the samples alongwith NCB Forms, F.I.R., sample seal were handed over to Constable Inder Singh (PW4) vide R.C. No.77/2004, who deposited the same in CTL, Kandaghat. Copy of the RC is Ext.PW6. He has further stated that he did not tamper with the parcels, during the period it remained in his custody. Hem Raj (PW7) is a witness who handed over the Scale on the demand of the police. The case of the appellant in his statement under Section 313 of the Code of Criminal Procedure is denial only. The defence raised by the appellant is that he was traveling in a bus at Khotinala

and nothing was recovered from him, but this plea is not made out from the record at all.

According to the learned counsel for the appellant, there has been non compliance of Section 50 of the Act, which vitiates the trial court. It is already observed supra that there was no prior information to the police with respect to Charas or any contraband. Since it was a case of chance recovery, therefore, provisions of Section 50 of the Act in the instant case are not attracted.

It is next argued by Ms. Kamlesh Kumari, learned counsel for the appellant that it was the case of prosecution that two samples of 25 grams each of Charas from the recovered quantity were drawn and one was sent for the chemical examination. The report of the Chemical Examiner reveals that the contents of the sample were only 18.9970 grams and not 25 grams. Since this variation of sample creates doubts, this benefit should have been given to the appellant.

I have examined this argument of the learned counsel for the appellant. It is a fact that the Chemical Analyst report shows a difference of about 6 grams of the contents of the sample. It is a known fact that the Chemical Analysis Laboratory are using the electronic Scales, which are accurate to the decimals, whereas, in the instant case, a conventional scale has been used to weigh the sample. Therefore, this variation in the weight in not fatal in view of the other evidence on this aspect. The prosecution has proved that two samples of 25 grams each were drawn from the bulk. Each of the samples from bulk were sealed. According to MHC Munshi Ram, the case property alongwith documents were received

and entered by him in the Malkhana register and on the same day, one of the sealed sample was sent to the Laboratory through Constable Inder Singh. However, he deposited the same in the same condition on the next day in the Laboratory and nothing was suggested by the appellant in the cross-examination of MHC Munshi Ram and Constable Inder Singh that the sealed packets were tampered with either when deposited in Malkhana or at the time while taking for testing of the samples. Further the evidence on record did not create suspicion beyond reasonable doubt that the sealed packets contained the documents and seal impression `H' were tampered with when the samples and seal reached, the Chemical Examiner. The deficiency in the weight in weighing the sample in the above circumstances cannot be held to be prejudicial to the appellant in any manner, therefore, the contention raised by the learned counsel for the appellant is unfounded, hence rejected.

The upshot of the entire discussion is that In the instant case, the link evidence is complete, the recovered quantity from the appellant has been proved to be that of Charas. The appellant was rightly convicted and sentenced for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act for the quantity which was lesser than a the commercial quantity. Therefore, no fault can be found with the impugned judgment of conviction and sentence. Accordingly it is upheld and the appeal is dismiss ed.

August 9th, 2007. **(Surinder Singh)**
(PDS) **Judge**.